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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-202536

DATE: July 8, 1981

MATTER OF: Decision Planning Corporation

DIGEST:

1. Protester's arguments concerning amount of time allowed for restructuring proposal after receipt of amendment, method used to send amendment, and agency's refusal to extend closing date are untimely and not for consideration on merits since these arguments are against alleged improprieties in solicitation which were not filed before closing date for receipt of initial proposals.
2. Late hand-carried proposal may not be considered on ground that delay in delivery was due to improper Government action since, even if there was improper Government action, such action was not paramount reason for delay in delivery.
3. GAO will not question contracting agency's decision to exclude protester's incomplete proposal from competitive range where major portion of proposal was received after closing date for receipt of initial proposals.

Decision Planning Corporation (DPC) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DE-RP01-81AD58004 issued by the Department of Energy (DOE).

The RFP solicited offers for a "Project Management Intermediate Level Skills Training Series" for DOE's Office of Personnel. Due to delay in receipt of an amendment which required proposal changes and severe weather conditions which prevented its commercial carrier from delivering the complete proposal package

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to the agency on time, DPC was able to deliver only 30 pages of its over 300-page proposal by the RFP's deadline. DOE refused to consider the subsequently delivered remainder of DPC's proposal. After evaluating the 30 pages that had been submitted timely, DOE excluded DPC from the competitive range. DPC argues that, under the circumstances, its whole proposal should have been evaluated rather than only the 30 pages timely received.

We find no basis to question the agency's decision.

The RFP's February 13, 1981, closing date for receipt of initial proposals was extended to February 27, 1981, and then to March 6, 1981. Offerors were notified of the last extension by amendment M004 which also advised that another amendment would soon follow with changes requiring pricing revisions.

DPC received amendment M004 on February 23, 1981, and on that day telephoned the DOE contract office for details about the forthcoming amendment. DPC was told that the changes were extensive and that it was advisable to review amendment M005 upon receipt. By Friday, February 27, 1981, DPC had not received amendment M005, and it called the agency. The DOE representative instructed DPC to call immediately if the amendment was not received by Monday, March 2, 1981. DPC received the amendment on Monday. DPC took several days until March 5, 1981, to restructure and reprice its proposal in response to amendment M005.

Since DPC is located in California and the proposal receipt office was in Washington, D.C., on March 5, 1981, DPC sent its proposal by commercial carrier with a guaranteed delivery prior to the March 6, 1981, closing date. A snowstorm in Washington, D.C., delayed delivery of the proposal. As soon as DPC learned of this, it telephoned the DOE contract specialist to request an extension of the filing deadline until Monday, March 9, 1981, but the request was denied.

DPC telefaxed 30 pertinent pages from the three volumes of its proposal to DOE before the deadline. At 11:30 p.m. that night, DPC's commercial carrier tried to deliver the complete package, but the DOE guard refused to accept it. The package was finally delivered on the morning of March 9.

At first, DOE refused to consider the 30 pages that had been delivered on time because of the lack of original signatures and sufficient copies. However, DOE decided to waive these defects as minor informalities and to evaluate the 30 pages only. DOE did not consider the complete proposal because the proposal constituted a late amendment which did not fall within any of the exceptions of the RFP's late proposal clause. After evaluating the 30 telefaxed pages, DOE found DPC's proposal technically unacceptable and excluded it from the competitive range.

DPC argues that DOE did not provide adequate time for restructuring and repricing proposals, should not have sent amendment M005 by first-class mail, but by some quicker means, and acted arbitrarily in refusing to extend the closing date.

These grounds of protest are untimely and will not be considered on the merits. Under our Bid Protest Procedures, protests based upon alleged improprieties in any solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed either with our Office or the contracting agency prior to that closing date. 4 C.F.R. § 20.2(b)(1) (1980). All of the above grounds of protest are alleged improprieties that were apparent but not protested prior to the closing date for receipt of initial proposals. Although, DPC requested an extension of the closing date prior to the deadline, when this request was denied, DPC did not protest, but increased its efforts to deliver the proposal on time. We do not believe that DPC's request for an extension or any complaint it might have made at the time of the denial constituted a protest to the agency since there was no apparent protest intent. See Comprehensive Health Services, Inc., 58 Comp. Gen. 658 (1979), 79-2 CPD 37.

DPC next protests that its proposal should not have been excluded from the competitive range based on an evaluation that considered only 30 pages of more than 300 pages. DPC believes that DOE's failure to send amendment M005 by a quicker means, as well as its refusal to extend the closing date, amounts to arbitrary agency action which is the main reason for delay in the delivery of DPC's complete proposal.

DOE has characterized this as a claim that DPC's hand-carried proposal was late due to improper Government action. In rebuttal, DOE states that it is the offeror's responsibility to deliver its proposal to the proper place at the proper time; before a late hand-carried proposal can be considered, the offeror must demonstrate that the delay in receiving the proposal is attributable to improper Government action. According to DOE, even if there has been improper Government action, DPC has not shown this action to be the paramount cause of the late receipt. Having failed to so demonstrate, DOE believes that, under our decisions, DPC's late hand-carried proposal is not entitled to consideration.

We believe that DOE's position is correct and supports the agency's considering only that portion of the proposal timely received. As a general rule, late hand-carried proposals cannot be considered. We have recognized an exception where the late delivery is due to improper Government action which is the paramount reason for the late receipt. Southern Oregon Aggregate, Inc., B-190159, December 16, 1977, 77-2 CPD 477.

The paramount reason for the delay in the delivery of DPC's proposal was the failure of the commercial carrier to make the guaranteed delivery caused by the snowstorm. We have held that a delay in delivery due to unanticipated causes, such as a severe snowstorm, does not relieve the offeror of the responsibility of delivering its proposal to the proper place at the proper time. O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267. Therefore, even if we assume without deciding that improper Government action was present

here, the above-mentioned exception to the general rule would not apply, since any improper Government action would not have been the paramount reason for the delay in the delivery of DPC's proposal. Of particular significance, we point out that 12 timely offers were received under this solicitation so that adequate competition was achieved. Moreover, there is no indication that DOE deliberately tried to prevent DPC from submitting a proposal. ECON Incorporated, B-198454, July 22, 1980, 80-2 CPD 60. As a result, DPC must bear the consequences of the late DOE receipt of its full proposal.

Finally, the determination whether a proposal is within the competitive range is primarily a matter of administrative discretion which will not be disturbed unless it is clearly arbitrary or capricious. Decilog, B-198614, September 3, 1980, 80-2 CPD 169. Qualification for inclusion in the competitive range should be determined only on the basis of material timely submitted. E-Systems, Inc., B-188084, March 22, 1977, 77-1 CPD 201. Therefore, we find no basis to question the reasonableness of DOE's decision to exclude DPC's admittedly incomplete proposal from the competitive range.

Protest denied.



Acting Comptroller General
of the United States